

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY	)	MDL No. 1456
AVERAGE WHOLESALE PRICE LITIGATION	)	Master File No. 01-12257-PBS
	)	Judge Patti B. Saris
	)	
THIS DOCUMENT RELATES TO:	)	
State of California, <i>ex rel.</i> Ven-A-Care v.	)	
Abbott Laboratories, Inc., <i>et al.</i>	)	
CASE #: 1:03-cv-11226-PBS	)	
	)	

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**STATE OF CALIFORNIA'S STATUS REPORT-JUNE 1, 2006**

The undersigned counsel, on behalf of plaintiff STATE OF CALIFORNIA ("CALIFORNIA") hereby submits the attached Status Report to the Court in accordance with the Court's June 17, 2004 Procedural Order.

Respectfully submitted,

BILL LOCKYER  
Attorney General for the State of California

Dated: June 1, 2006

By: /s/ Nicholas N. Paul  
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**Attorneys for Plaintiff,  
STATE OF CALIFORNIA**

**MDL 1456 Status Report**

**State of California, ex rel. Ven-A-Care v. Abbott Laboratories, Inc., et al.**  
**Case No.: 1:03-cv-11226-PBS**

**First Amended Complaint in Intervention**

Plaintiffs filed a First Amended Complaint in Intervention (FAC), with redacted exhibits, on August 25, 2005.

**Motion to File Unredacted Exhibits Under Seal**

On August 25, 2005, Plaintiffs filed a motion for leave to file unredacted Exhibits under seal (Exhibits A-K and Exhibits M-R to the FAC). The Court granted the motion, and the unredacted exhibits were filed under seal.

**State of California's Election to Decline**

On September 9, 2005, California filed a motion for leave to file "State of California's Election to Decline as to Certain Defendants and Allegations" ("Election to Decline") under seal, which the Court granted on September 14, 2005. The Election to Decline was filed under seal on September 14, 2005.

**Qui Tam Plaintiff's Notice of Election/Dismissal**

On or about September 12, 2005, the *qui tam* plaintiff (relator) filed a motion for leave to file its "Notice of Election to Proceed and Notice of Dismissal" ("Notice of Election/Dismissal") under seal. The Court granted such motion, and the Notice of Election/Dismissal was filed under seal on September 14, 2005; however, the Motion was not acted upon. Since then, the Relator, in consultation with the State, has identified the additional claims and defendants that it will proceed against with or without State intervention, and the State is determining whether it will intervene with respect to additional claims and defendants. Relator intends to file a Third Amended Complaint, and the State will make its further elections and declinations. Accordingly, the

Relator shall withdraw its "Notice of Election/Dismissal."

**Case Management Order (CMO) 18**

On December 13, 2005, the Court issued CMO 18, providing a briefing schedule for the served Defendants' Motions to Dismiss, as well as rules regarding the conduct of discovery and document access pending a decision on Defendants' Motion to Dismiss.

**Motions to Dismiss**

On January 17, 2006, the served Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention. In addition, Abbott Laboratories Inc., B. Braun of America Inc. and ZLB Behring LLC filed individual Motions to Dismiss, and Defendants Boehringer Ingelheim Pharmaceuticals, Inc. and Boehringer Ingelheim Corporation filed a reply claiming the FAC should be dismissed under Fed. R. Civ. P. 9(b).

Plaintiffs filed their Oppositions to the joint and individual Motions to Dismiss on March 2. In addition, Plaintiffs filed their Objections to Defendants' request for judicial notice of the documents attached to their Motion to Dismiss. Served Defendants filed their joint and individual Replies on April 3, 2006, and Plaintiffs filed their Sur-Replies on April 17, 2006.

**Hearing on Defendants' Joint and Individual Motions to Dismiss**

On May 22, 2006 the Court heard argument on Defendants' joint and individual Motions to Dismiss.

**Additional Miscellaneous Filings**

- (1) On January 18, 2006, Plaintiff California filed a Motion to File under Seal its Ex Parte Application for a partial lifting of the seal. The Court granted that Motion on January 27, 2006, and granted the partial lifting of the seal on February 2, 2006.
- (2) On January 27, 2006, Plaintiff California filed a Motion to File Under Seal a

Stipulation and Proposed Order to Extend Seal of Relator's First Amended Complaint as to certain specific Defendants. The Court granted the Motion to File the Stipulation Under Seal on February 16, 2006. The Court approved the Stipulation on February 17, 2006, but reduced the duration of the seal period. On May 10, 2006, California filed another Motion to File Under Seal a Stipulation and Proposed Order to Extend Seal of Relator's First Amended Complaint as to certain specific Defendants. The Court has not yet issued an order on that Motion.

(3) On March 16, 2006, the court granted a joint motion to stay response for Lipha, S.A. and Merck KGaA and ordered that a proposed scheduling order be submitted within 30 days. On April 11, 2006, certain Defendants and Plaintiffs jointly submitted a proposed CMO to the Court, which sets a proposed briefing schedule for the four foreign Defendants on whom service is either in progress or has been recently effected.

(4) On April 28, 2006, Plaintiffs filed a Stipulated Motion for an Order Permitting the Deposition of Harvey Weintraub. The Court granted that motion, verbally, on May 22, 2006 at the conclusion of the hearing on Defendants' Motion to Dismiss the FAC.

#### **Anticipated Filings**

California may file additional motions/pleadings, under seal when necessary, to dispose of the State's interests in matters remaining under seal. Plaintiffs will request a Status Conference and the entry of a Case Management Order by a motion to be filed after the Court has adjudicated the served Defendants' joint and individual Motions to Dismiss. In addition, the Relator will file its Second Amended Complaint with respect to the remaining Defendants and claims on which California has thus far declined to intervene.

**CERTIFICATE OF SERVICE**

I, Nicholas N. Paul, hereby certify that on June 1, 2006, I caused a true and correct copy of the foregoing, **STATE OF CALIFORNIA'S STATUS REPORT-JUNE 1, 2006**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: June 1, 2006

/s/ Nicholas N. Paul  
NICHOLAS N. PAUL  
Supervising Deputy Attorney General